

TEXAS DEPARTMENT OF STATE HEALTH SERVICES



DIVISION FOR REGULATORY SERVICES ENVIRONMENTAL AND CONSUMER SAFETY SECTION POLICY, STANDARDS, AND QUALITY ASSURANCE UNIT PUBLIC SANITATION AND RETAIL FOOD SAFETY GROUP

FREQUENTLY ASKED QUESTIONS TECHNICAL

Listed by Section of the Texas Food Establishment Rules

§228.2 Definitions

Are all surfaces of reach-in working coolers considered food contact surfaces?

§228.2 (55)

Not all surfaces of the reach in cooler are considered food contact. If food products are in the reach in preparation cooler uncovered and above the load line, then the interior portion of the lid of the reach in cooler would be considered a food contact surface.

Are raw fruits and vegetables considered time/temperature control for safety foods?

§228.2(144)

No, except for cut tomatoes, cut leafy greens, cut melons and raw seed sprouts.

Using Table B in §228.2 (144) of the Texas Food Establishment Rules, cut fresh tomatoes, cut leafy greens, cut melons and raw seed sprouts are considered a TCS food because they will support the growth of foodborne pathogens. Whole intact tomatoes and melons with their protective waxy cuticle/rinds and low water activity on the vegetable/fruit surface do not support the growth of foodborne pathogens on the surface and would not be considered a TCS Food.

Is ice cream a time/temperature control for safety food?

§228.2(144) and §228.75(a)

The federal standard of identity for ice cream defines it as a frozen product and, therefore, it is in a state that does not support pathogen growth due to the low temperature. In addition, the water in the product is not available for bacterial growth, since it is in a frozen form. Ice cream is a food product that is shipped, stored, sold and consumed frozen. Hence, in its edible form, ice cream is always in a state that will not support rapid pathogen growth. Under TFER §228.75(a) stored frozen foods shall be maintained frozen.

What is a “check, dirty egg” as mentioned in the definition of a restricted egg?

§228.2(120)

A check is an individual egg that has a broken shell or crack in the shell, but with its shell membranes intact and its contents do not leak. A dirty egg is an individual egg that has an unbroken shell with adhering dirt or foreign material, prominent stains, or moderate stains covering more than 1/32 of the shell surface if localized, or 1/16 of the shell surface is scattered as defined under United States Department of Agriculture (USDA) 'United States Standards, Grades, and Weight Classes for Shell Eggs'.

Subchapter B. Management and Personnel

If a public health authority is notified by a clinic or physician that a food service worker has been diagnosed with Norovirus, hepatitis A virus, *Salmonella* typhi, Non-typhoidal *Salmonella*, *Shigella*, or Shiga toxin-producing *Escherichia coli*, can the health authority reveal the person's identity to the food establishment owner or manager? What are the HIPAA restrictions, if any?

§228.35(a) – (b); §228.257

A public health authority can reveal the identity of a food service worker that has been diagnosed with Norovirus, hepatitis A virus, *Salmonella* typhi, Non-typhoidal *Salmonella*, *Shigella*, Shiga toxin-producing *Escherichia coli* to the owner or manager, so that the employee can be excluded from the food establishment. Department of State Health Services (DSHS) Public Sanitation and Retail Food Safety Group is not a HIPAA covered entity (45 CFR 160.103), so we can use and disclose the information to the employer, as authorized by our laws. Public health authorities are acting within the scope of their authority as regulatory and investigative agencies, and there are exceptions that authorize covered entities, such as a clinic or physician, to disclose Protected Health Information to DSHS or other health authorities for these reasons (45 CFR section 164.512).

Can a food employee wear a medical identification bracelet?

§228.40

A food employee, while preparing food, is not allowed to wear jewelry on their arms or hands, with the exception of a smooth, plain ring. Necklaces with medical information or identification tags are acceptable.

Is a twist top bottle of water or soda considered in violation of the closed beverage container requirement?

§228.42(a)(2)

A food employee that is drinking from a twist top bottle would be in violation of §228.42(a)(2). The intent of the provision is to reduce the risk of a food employee's hands by contact with an area where the individual's mouth has touched. According to the Food and Drug Administration, a bottle with a twist top does not meet the requirement. A container with a pop-up cap is considered to be a closed beverage container and meet the requirement because a person does not need to use their hands to open or close the bottle.

Subchapter C. Food

Should expired dry foods, such as macaroni, cake mixes, etc., be marked as a violation of Item # 7?

§228.61

The expiration dates on packaged dry foods are voluntarily provided by the manufacturers. Code dates are useful for rotating product to prevent insect infestations. Often quality characteristics such as changes in flavor, color, or consistency are the basis for code dating rather than food safety concerns. Item #7 should not be marked for exceeding a voluntary expiration date unless the product is deemed unsafe, adulterated, or otherwise unfit for consumption.

The only exemption would be infant formula. Dating of on infant formula is a federal regulation. It has to do with nutrition more than food safety. The nutrients in the formula must contain not less than the quantity of each nutrient as described on the label. Manufacturers will but a use by-date to insure that nutrient levels are optimum. This is because formula is considered a sole source of nutrients for an infant. The same is not true for baby foods.

Is it a violation for TCS foods (burritos, corn dogs, chicken, etc.) to be without labeling as self-service items out of a hot-hold cabinet?

§228.62(a)(3)

If the items are not packaged (sold in open trays, etc.), they can be sold as self-serve items. This is a type of mini-buffet and the items would not require labeling. These should not be confused with bulk foods, which must be labeled with a posted card or sign.

Items that are for customer self-service that are packaged must meet the labeling requirements in TFER §228.79 (relating to labeling)

What documentation is necessary if a food establishment wants to practice bare hand contact with ready-to-eat foods?

§228.65(a)(5)(A)-(G)

The following documentation must be maintained at the food establishment if bare hand contact with ready-to-eat food is being done:

1. Obtain approval from the regulatory authority
2. Written policies and procedures
3. Food employees sign they have received training on the risks of contacting ready-to-eat foods with bare hands and on proper handwashing techniques
4. A written plan of the two safeguard control measures
5. A list of the specific ready-to-eat foods and food additives that will be touched by bare hands
6. A written log of corrective actions when the safeguard control measures are not followed
7. A written health policy to include but not limited to exclusions and restrictions, the Big 6 and reportable symptoms

Is it a violation of TFER, §228.66(a)(1) if there is no separation of frozen animal products?

§228.66(a)(1)

No, a violation would only be marked if there was evidence of obvious cross-contamination. Frozen animal products should be spatially separated to prevent any possible cross-contamination.

Are distressed foods if stored with other foods on display shelves such as canned foods or in refrigerated displays considered a priority item?

§228.184

Yes, Products that are held by the permit holder for credit, redemption, or return to the distributor, such as damaged, spoiled, or recalled products, shall be segregated and held in designated areas that are separated from food, equipment, utensils, linens, and single-service and single-use articles.

Is the temporary storage of in use, dispensing utensils and thermometers in a sanitizing solution a violation?

§228.68(b)

Yes. Utensils and food temperature measuring devices are direct food contact surfaces, which must be air dried or adequately dried after sanitization. Failure to dry could introduce unapproved levels of sanitizing solution into food. Acceptable methods of storage of in use utensils are addressed in §228.68(b).

What is the violation when wet wiping cloths are not stored in a sanitizing solution?

§228.68(d)(2)

If the sanitizing solution is adequate and the cloths are simply not being stored in the container after each usage, item # 36 (core item violation) should be marked.

Once in use, when do single-use gloves need to be changed (or replaced)?

§228.68(e)(1)

Texas Food Establishment Rules states that "if used, single-service gloves shall be used for only one task such as working with ready-to-eat food or with raw animal food, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation."

Single-service gloves should be discarded when the in-use gloves have been contaminated or potentially contaminated by pathogens that cause foodborne illness, including contact with time/temperature control for safety foods (TCS), surfaces that may have been in contact with TCS foods, or when physically damaged. The signs of contamination do not have to be visible.

Where in the TFER does it say that a product can only be reheated one time?

§228.73

The TFER does not address the number of times that a food product can be reheated. As long as all of the reheating, hot and cold holding and cooling requirements are met, it is not a violation to reheat a food product multiple times.

Do commercially processed hot dogs have to be heated to 135 degree Fahrenheit?

§228.73(c)

Hot dogs are a ready-to-eat food and do not require heating if intended for immediate service. If the hot dogs are for hot holding, they must be heated to 135 degrees Fahrenheit. FDA and USDA advise pregnant women, older adults, and people with weakened immune systems not to eat hot dogs unless they are steaming hot due to the greater likelihood of the product containing *Listeria monocytogenes*.

Can non-mechanical, insulated bins be used for short term display and sale of frozen food during peak selling hours and advertised specials?

§228.75(a)

The Texas Food Establishment Rules do not specify an ambient air temperature or internal product temperature for frozen food. The rules require only that frozen food remain frozen, which is deemed to be "hard to the touch." If a firm implements a written operational plan that includes time monitoring, monitoring records, and holding time limits to

ensure the product does not thaw or become "soft to the touch," then insulated bins may be used in lieu of mechanical freezer units.

Can a product that has not met the 135–70 degrees Fahrenheit cooling requirement after 2 hours be reheated to 165 degrees Fahrenheit and served or does it have to be destroyed?

§228.75(d)(1)(A)

If a time/temperature control for safety food is not cooled from 135 degrees Fahrenheit to 70 degrees Fahrenheit within two hours, the food can be reheated to 165 degrees Fahrenheit or above. The cooling process must be repeated so that compliance with the two-hour time limit is met.

Should foods be date marked with the date of consumption or the date of preparation?

§228.75(g)

According to the TFER, the container of ready-to-eat TCS food shall be marked to indicate the date by which food shall be consumed on the premises, sold or discarded. The ready-to-eat TCS food if held at 41°F can only be held for a maximum of 7 days, with day of preparation being day 1.

Is date marking required on all cheeses repacked at retail?

§228.75(g)(7)

No. Hard cheese manufactured as specified in 21 CFR §133.150, with a moisture content not exceeding 39%; and semisoft cheeses manufactured as specified in 21 CFR §133.187, with a moisture content less than 50%; and pasteurized process cheese manufactured according to 21 CFR §133.169 and labeled as containing an acidifying agent are exempt from the date marking provision. These cheeses must be maintained under refrigeration. Examples of hard cheeses include Cheddar, Gruyere, Parmesan, Reggiano and Romano. Examples of semisoft cheeses include Blue, Edam, Gorgonzola, Gouda, and Monterey jack. The FDA has an interpretation from 6/11/2015 that includes a list of some exempt and non-exempt cheeses.

Does milk still have to be obtained in either ½ pint containers or in bulk containers and does it have to be date marked?

§228.75(g)(2)

The TFER does not address the type or size of the milk container. Milk is a commercially processed ready to eat time/temperature control for safety (TCS) food and must be date marked at the time that the original container is opened, if the milk will not be consumed within 24 hours. The container must be marked with the "consume by date". Milk in a dispensing machine may be marked by an alternative method that is acceptable to the regulatory authority.

When using time as a public health control, must the procedures be written?

§228.75(i)(1)

Yes, written procedures shall be prepared in advance, maintained in the food establishment and made available to the regulatory authority upon request.

What documentation is required when using time only as a public health control?

§228.75(i)(2)-(3)

The TFER states that if time only is used as the public health control:

A) Using 4 hours maximum time §228.75(i)(2):

- 1) the food shall be labeled with the discard time
- 2) the food shall be used or discarded within 4 hours from the time when the food is removed from hot temperature control
- 3) out-of-temperature control food that is not time-labeled or that is marked with a time that exceeds 4 hours shall be discarded
- 4) written procedures for using time only as a public health control shall be maintained in the food establishment.

B. Using 6 hours of 70°F maximum time for cold foods §228.75(i)(3):

- 1) the food shall be labeled with the discard time
- 2) the food shall be used or discarded within 6 hours from the time when the food is removed from temperature control or if the food reaches an internal temperature of 70°F, whichever comes first.
- 3) out-of-temperature control food that is not time-labeled or that is marked with a time that exceeds 6 hours of reaches an internal temperature of 70°F, whichever comes first, shall be discarded
- 4) written procedures for using time only as a public health control shall be maintained in the food establishment.

Required documents include:

- (1) Standard Operating Procedures (SOP) document.
- (2) A temperature log (product, date, cook time, discard time).
- (3) Product time labels (stickers, dots)

Is a variance necessary for establishments that process deer meat for individual customers?

§228.76(6)

Yes, a variance would be necessary for an establishment that processes deer meat for individual customers. The deer meat can not be sold or served in the establishment.

What are the labeling requirements for a food establishment that sells unpackaged bakery products, such as whole pies, that are not available for customer self-service?

§228.79(a)(4)

Retail food establishments that sell unpackaged, bakery products, such as whole pies are not required to label the products if the following criteria are met:

- (1) A health, nutrient content or other claim is not made;
- (2) The food is prepared on the premises of the food establishment;
- (3) The ingredients in the food, including potential allergens, can be provided to the consumer on request from a recipe book or by other means (sign, placard).

Do meat and poultry products purchased or prepared by a retail food establishment have to bear the appropriate mark of federal or state inspection?

§228.62(a)(1), Texas Meat & Poultry §§433.025, 433.041, and 433.052

Retail food establishments that prepare meat and poultry products can sell products they prepare at a retail level only. These products can only be sold directly to the end point consumer. Mobile food establishments that purchase food

products containing two percent (2%) or more cooked meat or poultry, or three percent (3%) or more raw meat or poultry will be held to the same requirements as a restaurant. Restaurants and other retail food establishments are required to buy and sell only meat and poultry products that have first been inspected and passed by the United States Department of Agriculture (USDA), the Texas Department of State Health Services (DSHS), Meat Safety (MSA) Unit, or an approved foreign country. Meat and poultry products purchased by the operator of a mobile food establishment must bear complete labeling including the USDA or MSA marks of inspection. Pre-assembled, closed-faced sandwiches are an exception to this rule, as these meat products are exempt from USDA or MSA inspection and are not required to bear the mark of inspection. If a retail establishment wants to make and sell closed-faced sandwiches, however, the retail establishment must use inspected meat components in those sandwiches.

Mobile food establishments that are owned and operated by a licensed retail food establishment (restaurant) are viewed as part of the restaurant and operating as an “extension” of the restaurant’s retail food establishment license. Mobile food establishments owned and operated by a licensed commissary may also distribute these products on a retail level.

Subchapter D. Equipment, Utensils, and Linens

Can a cedar wood plank be used as a cooking surface?

§228.102

Yes, if the following criteria are met:

- 1) The plank must be a single-use item and be discarded after use.
- 2) The plank must be clean, smooth, and free of any splinters or loose debris.
- 3) Documentation must be available to show that the wood was not treated with any type of chemical substance.

Is there no longer a water temperature requirement for lobster tanks?

§228.106(j)

There is no water temperature requirement for lobster tanks listed in the TFER. The USDA does recommend a water temperature for live lobster of 41 to 50 degrees F.

Can a tub be used for the third compartment of a warewashing sink if the firm is using single service tableware?

§228.107(b)(3)(F)

The regulatory authority may approve the use of alternative warewashing equipment when there are special cleaning needs or constraints. Approval is not contingent upon using single service tableware. Important considerations include the volume of utensils to be washed, size of the equipment/utensils to be washed, physical limitations to setting up a receptacle, changes in type or scope of operation, and the firm's history of compliance with washing and sanitizing procedures. The regulatory authority may require written documentation as part of the approval process.

Are there specifications for a “suitable small-diameter probe that is designed to measure the temperature of thin masses”?

§228.108(c)

There are no specific requirements for small diameter probes stated in the TFER. Thin foods are considered to be foods that have a thickness of less than 0.5 inch. In the Public Health Reasons, Annex 3 of the FDA Food Code, FDA states that temperature measurements in thin foods can be accurately measured using a small diameter probe 1.5 mm or less

connected to a device such as a thermocouple thermometer. This does not mean that only thermometers with probes of 1.5 mm or less are acceptable, or that it must be a thermocouple thermometer. A thermometer is acceptable if the probe can be inserted into the product so that there is an equal amount of food surrounding the temperature sensing point and if the temperature sensing point is at or near the tip of the probe.

Would it be a violation if the chlorine concentration at the final rinse step on a mechanical warewashing machine was greater than the amount indicated on the chart on page 106 of the TFER, but was less than 200 ppm?

§228.111(n)(6)(D)

This would be marked as a priority foundation violation. The dishes are being sanitized, but the machine is not meeting the manufacturer's specifications.

If the proper sequence for manually washing dishes is not being followed, how should the violation be marked?

§228.111(n) and §228.115(f)(1)

Priority item #10 would only be marked if the sanitizing solution was not at the proper concentration. Check the strength of the solution because the detergent and food debris can break down the solution. If the sanitizer is acceptable, mark the violation as a priority foundation item # 33. Explain the rationale for the washing sequence to the Person in Charge (PIC).

What is an "irreversible registering temperature indicator"?

§228.118(2)

An "irreversible registering temperature indicator" is a temperature measuring device that shows or indicates the maximum or minimum (depending on whether the instrument is designed for hot or cold temperatures) temperature measured. Examples of irreversible registering temperature indicators include hot and cold holding thermometers, hot and cold registering thermometers, and temperature indicating papers and tapes. A dish machine's internal thermometer may not be an irreversible registering thermometer; consult the manufacturer's instruction manual. If it is not an irreversible registering thermometer, one would have to be provided.

Subchapter E. Water, Plumbing, and Waste

What is the required temperature for hot water at the handwash sink?

§228.146(b)(1)

The minimum temperature for hot water at the handwashing facility (sink) is 100 degree Fahrenheit.

Does a triggered sprayer on the end of a hose serve as adequate backflow prevention?

§228.146(c) and §228.146(d)

A triggered sprayer on the end of a hose is not an adequate backflow prevention device.

The service sink requirement (mop sink) does not specify whether the sink is required to have hot and cold running water. Is there another provision that would clarify this requirement?

§228.143(b)

The TFER, §228.143(b), states that water under pressure shall be provided to all fixtures, equipment, and nonfood equipment. A service sink is a fixture that must be supplied with water under pressure. In addition to being used to dispose of mop water, a service sink or curbed cleaning facility is used for the cleaning of mops. Water is necessary for the cleaning of the mops. The TFER does not contain a provision that specifies the temperature of the water at the service sink. Certain cleaning agents require certain temperatures to work effectively to remove soil and debris; therefore, the water temperature would be dependent upon the cleaning agent used in the facility.

Is it acceptable for the handwash lavatory to be greater than 25 feet from an ice bagging operation if there are no intervening barriers?

§228.148(a)

The operating procedures should be evaluated. Typically, bagging ice is performed as a batch operation. If employees wash their hands prior to bagging and use good hygienic practices, the lavatory may be greater than 25 feet away. TFER does not address the maximum distance requirement for the lavatory location; however a regulatory authority may have distance and height requirements for lavatory locations.

Is an indirect ice machine drain that extends into a wastewater pipe a priority violation?

§228.150(c) (1) Backflow Prevention

Yes, Except as specified in paragraphs (2), (3) and (4) of this subsection, a direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed.

Further supported by the Uniform Plumbing Code. Please check with local Code Enforcement for any additional plumbing requirements.

Uniform Plumbing Code:

801.2.3 Food-Handling Fixtures.

Bins, sinks, and other equipment having drainage connections and used for the storage of unpackaged ice used for human ingestion, or used in direct contact with ready-to-eat food, shall be indirectly connected to the drainage system by means of an air gap.

Subchapter F. Physical Facilities

Is one fly on the preparation table a violation?

§228.186(k)

Yes, TFER §228.186(k), states the presence of insects, rodents, and other pest shall be control to eliminate their presence. This would be a core item #34 violation

Should the presence of dead bugs be marked as a violation of Item #34?

§228.186(k) and §228.186(l)

The investigator must evaluate whether insects are being eliminated. Typically this requires evaluating whether the firm is routinely monitoring for pest activity and properly using traps or chemical control, if necessary. If live insects appear to be out of control or failure to remove dead insects, pest, etc., then Item # 34 should be marked as a core violation. If dead insects are located on a food-contact surface, Item # 10 should be marked as a priority violation.

Subchapter G. Poisonous or Toxic Materials

What are the names of some approved sanitizer/detergents?

§228.204(a)(1)

DSHS does not currently maintain such a list. A list of approved sanitizer can be found in 21 CFR178.1010 and also can be found on the Environmental Protection Agencies website: www.epa.gov. Sanitizers are regulated as pesticides.

Is the 400 ppm Quaternary Ammonia Sanitizer allowed?

§228.206(a)

On September 6, 2007, the US EPA issued in the Federal Register a final rule which amends 40 CFR 180.940(a) to allow the use of quaternary ammonia, di-n-alkyl (c 8-10) dimethyl ammonium chloride in end use solution concentration up to 400 ppm active quaternary ammonium compound in retail eating places. The chemical compound should be listed on the manufacturer's label.

Is a mechanical warewashing machine dispensing 200 ppm chlorine on the final rinse a violation?

§228.206(a)

It would only be a violation if the concentration was greater than 200 ppm chlorine and it would be a violation of Item #18 because that concentration is considered toxic, per 21 CFR 178.1010. Concentrations of the chlorine solution can vary, depending on the temperature and pH of the final rinse water. Refer to the chart on page 106 of the TFER. If the concentration was less than was required for the corresponding water temperature and pH, it would be a violation of item #10.